

General Information Letter: Military retirement pay is not subject to Illinois income tax.

September 20, 1999

Dear:

This is in response to your letter dated July 23, 1999 in which you requested information concerning the Illinois income taxation of military retirement pay, including military disability retirement pay. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you have stated:

Title 10, United States Code authorizes three survivorship annuity plans under which retired military personnel (and uniformed personnel of the Public Health Service and National Oceanic and Atmospheric Administration) may provide for payment of annuities to their surviving spouses or dependent children by electing to receive a reduced rate of retired pay during their own lifetime. Subchapter I (10 U.S. Code 1431-1446) is the Retired Serviceman's Family Protection Plan (RSFPP) (formerly the Uniformed Services Contingency Option Act of 1953); Subchapter II (10 U.S. Code 1447-1455) covers the Survivor Benefit Plan (SBP) (P.L. 92-425); and Subchapter III (10 U.S. Code 1456-1460) covers the Supplemental Survivor Benefit Plan (SSBP (P.L. 101-189)).

Our Association maintains a file of general information concerning the tax treatment of annuities such as RSFPP, SBP and SSBP for tax purposes by federal, state and local tax authorities. In addition, we publish an annual tax article (1997 edition attached) which is sent to our 400,000 members.

It would be appreciated if you would inform us whether or not RSFPP, SBP, and SBP annuity payments are subject to any of the following state taxes, if such taxes are imposed by your state, any applicable exemptions (monetary or other) and excerpts from applicable state tax law/statutes: (a) Income Tax, (b) Inheritance Tax, (c) Estate Tax and (d) Gift Tax.

Previous information received from your state is reflected in the attached article under the heading "State Income Tax Information on SBP/RSFPP/SSBP Annuities." One purpose of this correspondence is to validate or update your State's data as contained therein. Your prompt

reply would be appreciated to facilitate an late November 1997 editorial deadline.

Thank You for your interest and assistance in helping us to better inform military personnel and their survivors as to their tax obligations.

DISCUSSION

With respect to the Illinois Income Tax, Section 203 (a)(2)(F) of the Illinois Income Tax Act provides a subtraction modification from federal adjusted gross income for all amounts included in a taxpayer's federal adjusted gross income as distributions under any retirement or disability plan for employees of any governmental agency or unit as well as distributions from any federally tax-qualified retirement plan. The Department has interpreted this subtraction modification to include annuity payments under the RSFPP (Retired Serviceman's Family Protection Plan) and the SBP (Survivor Benefit Plan). Our review of the SSBP (Supplemental Survivor Benefit Plan) leads us to conclude that SSBP Payments would also be included within the scope of this subtraction modification. You should note that since these payments will not be subject to Illinois income taxation, they will also not be subject to Illinois income tax withholding.

In your letter, you also inquired about inheritance tax, estate tax and gift tax. The Illinois Department of Revenue does not administer and enforce any inheritance, estate or gift taxes. For information concerning inheritance and estate taxes, you may write to the Illinois Attorney General, Inheritance Tax Division, James R. Thompson Center, 100 West Randolph, Chicago, IL 60601.

Please feel free to correspond with me further if I may be of additional assistance.

Sincerely,

Charles E. Matoesian
Associate Counsel - Income Tax